



NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
REGGIE LYN BISHOP,

Debtor.

WILLIE PHELPS,

vs.
REGGIE BISHOP,

Plaintiff,

Defendant.

Case No. 2:16-bk-16503-RK

Chapter 7

Adv. No. 2:16-ap-01388-RK

**ORDER POSTPONING RULING ON
DEFENDANT'S MOTION TO DISMISS
ADVERSARY COMPLAINT FOR FAILURE
TO MEET BURDEN OF PROOF UNTIL
TRIAL**

Vacated Hearing

Date: August 15, 2017

Time: 3:00 p.m.

Courtroom: 1675

Pending before the court is the Motion of Defendant Reggie Lyn Bishop to Dismiss Adversary Complaint for Failure to Meet Burden of Proof ("Motion") (Docket No. 84), filed on July 19, 2017. Plaintiff filed an Opposition to the Motion on July 24, 2017

1 (Docket No. 86). Defendant Reggie L. Bishop represents himself. JoAnne E. Belisle,
2 of the law firm of Campbell & Farahani, LLP, represents Plaintiff Willie Phelps.

3 Having considered the Motion and the Opposition thereto, the court determines
4 that pursuant to Local Bankruptcy Rule 9013-1(j)(3), oral argument on the Motion is
5 unnecessary, dispenses with it, vacates the hearing on the Motion noticed for August
6 15, 2017 at 3:00 p.m. and rules as follows.

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8 Federal Rule of Civil Procedure 12(i) states: "If a party so moves, any defense
9 listed in Rule 12(b)(1)-(7)---whether made in a pleading or by motion---and a motion
10 under Rule 12(c) must be heard and decided before trial unless the court orders a
11 deferral until trial." This rule is made applicable to this adversary proceeding by Federal
12 Rule of Bankruptcy Procedure 7012(b). Under these rules, the court has discretion to
13 postpone a ruling on a motion to dismiss to trial. See O'Connell and Stevenson, *Rutter*
14 *Group Practice Guide: Federal Civil Procedure Before Trial*, ¶9:273 at 9-112 (2017),
15 *citing*, Federal Rule of Civil Procedure 12(i).

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18 Defendant in the Motion seeking dismissal of this adversary proceeding contends
19 that Plaintiff cannot meet its burden of proof in this proceeding, and as such, the court
20 construes the Motion as one to dismiss for failure to state a claim upon which relief can
21 be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable here
22 by Federal Rule of Bankruptcy Procedure 7012(b). Since it appears to the court that the
23 Motion raises the same arguments that the court would need to decide at trial, pursuant
24 to Federal Rule of Civil Procedure 12(i), made applicable here by Federal Rule of
25 Bankruptcy Procedure 7012(b), the court exercises its discretion to postpone its ruling
26 on the Motion to the time of trial. No trial date is yet set in this adversary proceeding,
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1 but the court expects to set a trial date at the pretrial conference in this adversary
2 proceeding now scheduled for August 29, 2017 at 2:00 p.m. No appearances are
3 required on August 15, 2017.

4 IT IS SO ORDERED.

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25 Date: August 2, 2017



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Robert Kwan
United States Bankruptcy Judge